



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 08-03871
)
)
Applicant for Security Clearance)

Appearances

For Government: Robert Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

May 22, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant had 27 past due or collection accounts that totaled \$63,000. Half of the debt has been paid, is being paid, or are deferred student loans and the other half is part of a recently established repayment plan. Applicant has rebutted or mitigated the government's security concerns under financial considerations. Clearance is granted.

Statement of the Case

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Statement of Reasons (SOR) on September 24, 2008, detailing security concerns under financial considerations.

On November 4, 2008, Applicant answered the SOR, and requested a hearing. On February 4, 2009, I was assigned the case. On February 19, 2009, DOHA issued a notice of hearing scheduling the hearing which was held on March 17, 2009.

The government offered Exhibits (Ex.) 1 through 6, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through E, which were admitted into evidence. The record was held open to allow additional information from Applicant. On April 1, 2009, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex. F. On March 31, 2009, the transcript (Tr.) was received.

Findings of Fact

In his Answer to the SOR, Applicant denied the factual allegations in SOR ¶ 1.e, 1.t, and 1.x of the SOR. He admitted the factual allegations of the remaining SOR allegations. His admissions are incorporated herein.

Applicant is a 36-year-old senior electrical installer who has worked for a defense contractor since February 1998, and is seeking to maintain a secret security clearance. (Tr. 58) Applicant's co-workers, colleagues, supervisors, acquaintances, and friends state: Applicant is very knowledgeable, a tremendous asset to the program, voluntarily works whatever hours it takes to achieve the desired goal, is well respected, a person of great character and integrity, hardworking, and honest. (Tr. 71, Ex. D) For the review period ending on December 31, 2008, his work performance was rated as far exceeding expectations.

The SOR lists 27 past due or placed for collection accounts totaling approximately \$63,000. Six of the debts have been listed twice. These duplicates are listed under different creditors or in different SOR paragraphs. In November 1997, Applicant was discharged from the Navy and in February 1998, started his current job. (Ex. F) In July 2002, Applicant's 1998 Chevrolet truck was repossessed after its transmission failed and would have required \$1,800 in repairs. (Tr. 73) This debt is listed twice in the SOR. The \$8,726 debt (SOR ¶ 1.l) is a company owed by the company listed in SOR ¶ 1.x (\$6,646). (Tr. 40-41, Ex. F) The \$6,646 has been transferred to a collection agency included in a debt settlement program. (Tr. 43, Ex. B) In January 2003, a car was repossessed due to financial difficulties incurred when his son was born prematurely and experienced medical problems. His wife was unable to work for four months. (Tr. 74, Ex. F)

In April 1999, Applicant's wife had kidney surgery. In November 2001, Applicant had ankle surgery. In March 2004, Applicant had back surgery and was on sick leave for six months. While on medical leave, he received 60% of his salary, which did not

cover the bills. (Tr. 75, 76) Two months later, in June 2004, his wife broke her ankle. (Tr. 75, Ex. F)

In 2006, Applicant's electrical utility bill greatly increased to \$650 to \$700 monthly. (Tr. 23, 64) As a result, in January 2007, Applicant sought the protection of a Chapter 13, wage earner's plan bankruptcy. Applicant could not afford the \$1,500 monthly payment due to his \$1,100 monthly mortgage, a \$300 car payment, \$355 monthly truck payment, and utility bills. (Tr. 24) The bankruptcy was converted to a Chapter 7, which was later dismissed. (Ex. A) The bankruptcy lists \$181,000 in assets and \$230,000 in liabilities (Ex. 6) Between the time of the conversion to Chapter 7, both Applicant and his wife received raises at work. Additionally, his wife's boss quit which resulted in his wife doing more overtime. (Tr. 25) With the additional income Applicant and his wife no longer qualified for the Chapter 7 bankruptcy. (Ex. A)

When the bankruptcy was dismissed the truck and car were repossessed and the home went to foreclosure. (Tr. 63) Following the resale of the home, the mortgage holder has not contacted Applicant. (Tr. 65) Following repossession, the truck sold for \$20,000 and the car for \$10,000 leaving a debt of \$5,800. (Tr. 69) Applicant has been making \$100 monthly payments to the credit union on this obligation. Applicant intends to include this debt in the debt payment arrangement. (Ex. B)

In March 2009, six months after receiving the SOR and a month after receiving the Notice of Hearing, Applicant sought the assistance of a financial company. The plan addresses a total debt of \$33,894 and requires paying \$510 for 43 months and paying a \$1,694 retainer fee by three installments of \$495 each. (Tr. 27, Ex. B) Following the hearing, on March 31, 2009, the first payment (\$495) of the retainer fee was made to the financial company. (Ex. F) Once sufficient funds were accumulated, the finance company will attempt to negotiate a settlement with Applicant's creditors. (Tr. 34)

Accounts included in the debt settlement program include the following debts: the \$697 medical debt (SOR ¶ 1.b and 1.g); \$427 (SOR ¶ 1.j); the \$714 telephone bill (SOR ¶ 1.m); \$689 (SOR ¶ 1.z); \$591 (SOR ¶ 1.aa); \$8,726 (SOR ¶ 1.l); \$5,549 (SOR ¶ 1.y), which Applicant asserts was his wife's debt prior to their marriage; the \$8,373 Ford repossession debt (SOR ¶ 1.o); \$5,400 (SOR ¶ 1.f); and the \$2,380 debt (SOR ¶ 1.u) is listed although it is being collected by a different collection agency. (Ex. B, F)

In October 2008, the \$1,455 debt (SOR ¶ 1.e) was paid. (Ex. B) This debt is the same obligation as the debt listed in SOR ¶ 1.n. (\$1,505). (Tr. 40) The original debt listed on Applicant's credit bureau reports (CBRs) (Ex. 2, 3, 4) is a collection agency debt (SOR ¶ 1.5) and lists the same debtor listed in SOR ¶ 1.e. Additionally, schedule F of the bankruptcy indicates the \$1,505 creditor (SOR ¶ 1.n) is the same debt collected by the collection agency. (Ex. B) In September and November 2008, the \$432 debt (SOR ¶ 1.d, also listed in 1.h) was paid. (Ex. B) On February 1, 2009, the U.S. Treasury, through the Department of Navy, offset a \$360 military credit card (SOR ¶ 1.t) which reduced the balance to zero. (Ex. B) In March 2009, the \$177 insurance bill (SOR ¶ 1.i) and the \$151 YMCA debt (SOR ¶ 1.c) were paid. (Ex. F)

Applicant's wife obtained five student loans which represent seven of the SOR debts. Those accounts were: \$2,133 (SOR ¶ 1.k); \$4,000 (SOR ¶ 1.p, which is the same debt as SOR ¶ 1.r); \$3,500 (SOR ¶ 1.q, which is the same debt as SOR ¶ 1.s); \$2,057 (SOR ¶ 1.v); and \$1,313 (SOR ¶ 1.w). The student loans, which total approximately \$15,000, are being deferred. (Ex. E, F) Applicant is repaying a loan from his 401(k) retirement plan at a rate of \$100 per month. He owes approximately \$4,600 on the loan. (Tr. 47)

In July 2008, Applicant answered written interrogatories (Ex. 5) and indicated he had made a payment arrangement with three of the creditors (SOR ¶ 1.f, \$5,852, which by March 2009, had been reduced by \$400; SOR ¶ 1.e; SOR ¶ 1.n, which was paid off in October 2008; and another creditor which was paid off before the SOR was issued.)

Applicant pays \$343 per month on a 2001 truck. (Tr. 50) He also has a 1997 car which is paid for. (Tr. 77) Applicant and his wife purchased a mobile home and five acres for \$77,000. Because of their poor credit, the loan company would not transfer the title to Applicant and his wife. (Tr. 48) Applicant pays \$688 per month on a two year lease on the property. (Tr. 49) The mobile home needed extensive repairs to the bathroom. In December 2008, Applicant was unable to make payments on some of his debt due to making the bathroom repairs. (Tr. 52)

Applicant receives \$125 monthly in VA disability. (Tr. 54) Applicant's wife is a corporate trainer. (Tr. 59) She has been with the company since 2005 and makes \$29,000 a year. (Tr. 60)

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this

decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Revised Adjudicative (AG) ¶ 18 articulates the security concerns relating to financial problems:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

The SOR lists 27 past due or collection accounts that totaled \$63,000. The record evidence supports a conclusion Applicant has a history of financial problems. Applicant's history of delinquent debt is documented in his credit reports, his interview by an Office of Personnel Management (OPM) investigator, his SOR response, his response to interrogatories, and his testimony. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Approximately half the SOR debt was paid or being paid or is deferred student loans. The remaining half was part of the repayment plan. Applicant paid five debts (\$3,415) plus two debts that were duplications (\$1,937) for a total of \$5,352 and is making payment on one additional debt (\$5,400). Applicant's wife's student loans (seven totaling \$13,000 plus two duplicates totaling \$7,500) which total approximately \$20,000 of the SOR debts are being deferred. Nine debts that total approximately

\$27,000 plus two duplications (\$7,343) that combined total more than \$34,000 of the SOR debts are included in a repayment plan.

Following the hearing, Applicant made his first payment to the repayment plan. Once sufficient funds are accumulated the finance company will attempt to negotiate payments on his delinquent accounts. The future of additional payments to the repayment plan is uncertain. The likelihood an individual will continue making payments can be judged by that individual's past conduct. Applicant has made a single payment; however, he earlier attempted to address his financial problems through bankruptcy which was filed In January 2007. Even though the bankruptcy was dismissed and Applicant's debts were not discharged, Applicant was attempting to address his financial problems before the SOR was issued.

Under AG ¶ 20(a), Applicant's financial problems were contributed to by the large increase in his electric bill and his son's premature birth and associated medical problems that resulted in his wife being unable to work for four months. These types of debts are unlikely to recur. AG ¶ 20(a) has some applicability.

Under AG ¶ 20(b), Applicant did not experience unemployment, but his wife was unable to work for four month following the premature birth of his son. AG ¶ 20(b) applies.

Under AG ¶ 20(c) and ¶ 20(d), Applicant has paid seven of the debts and is making payment on another debt. This is evidence which shows "a good-faith effort to repay overdue creditors or otherwise resolve debts." The student loans are in deferment. The remaining nine debts plus two duplicate debts are part of a repayment plan. The repayment plan, although belated, is in place and Applicant is paying into that plan. With the repayment plan in place, there is an indication that the problem is being resolved and is under control. AG ¶ 20(c) and ¶ 20(d) apply.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Half of the SOR debt has been paid, is being paid, or are deferred student loans and the other half is part of a repayment plan. The repayment plan is recent, but Applicant attempted to address his financial problems two years ago with his bankruptcy filing. A filing that was unsuccessful. Applicant had actively tried to address his past due debts before his recent repayment plan.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations: FOR APPLICANT

Subparagraph 1.a through 1.aa: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge